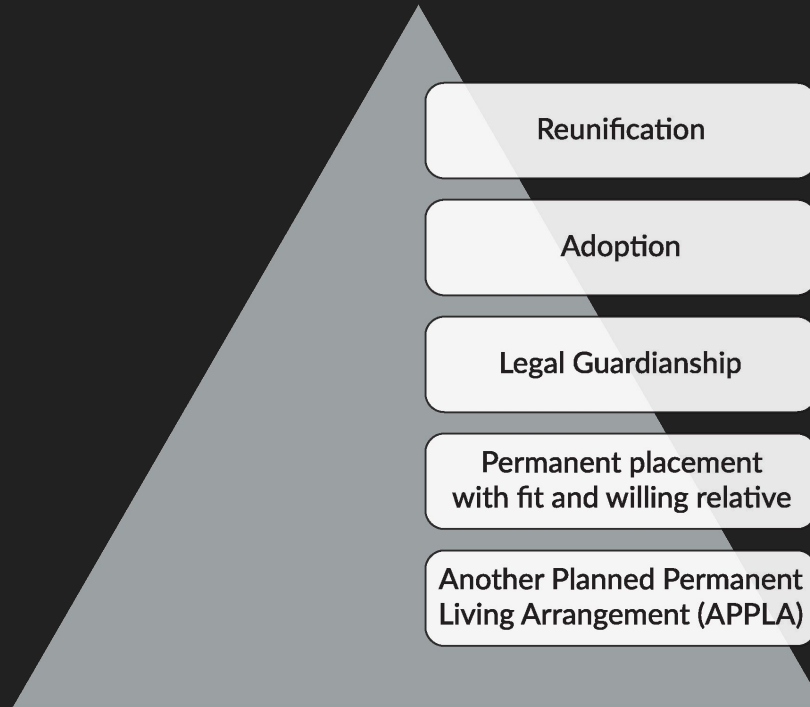




Session 9

Permanency for Alaska Native Children

Session 9: Permanency Options



Permanency: Reunification

- Can occur at any time during case
- As permanency plan:
 - specify **when** reunification will occur
- “Trial Home Visit”
- Case stays open for monitoring
- Statistics

Identifying Permanent Placement

- State statute and policy: relative searches done early in case
- Case law: OCS required to identify all potential preferred placements early in case, and assist tribal members to seek permanent placement
- ICWA placement preferences must be followed for adoptions and guardianships

“Proxy” to Preserve Placement Preference

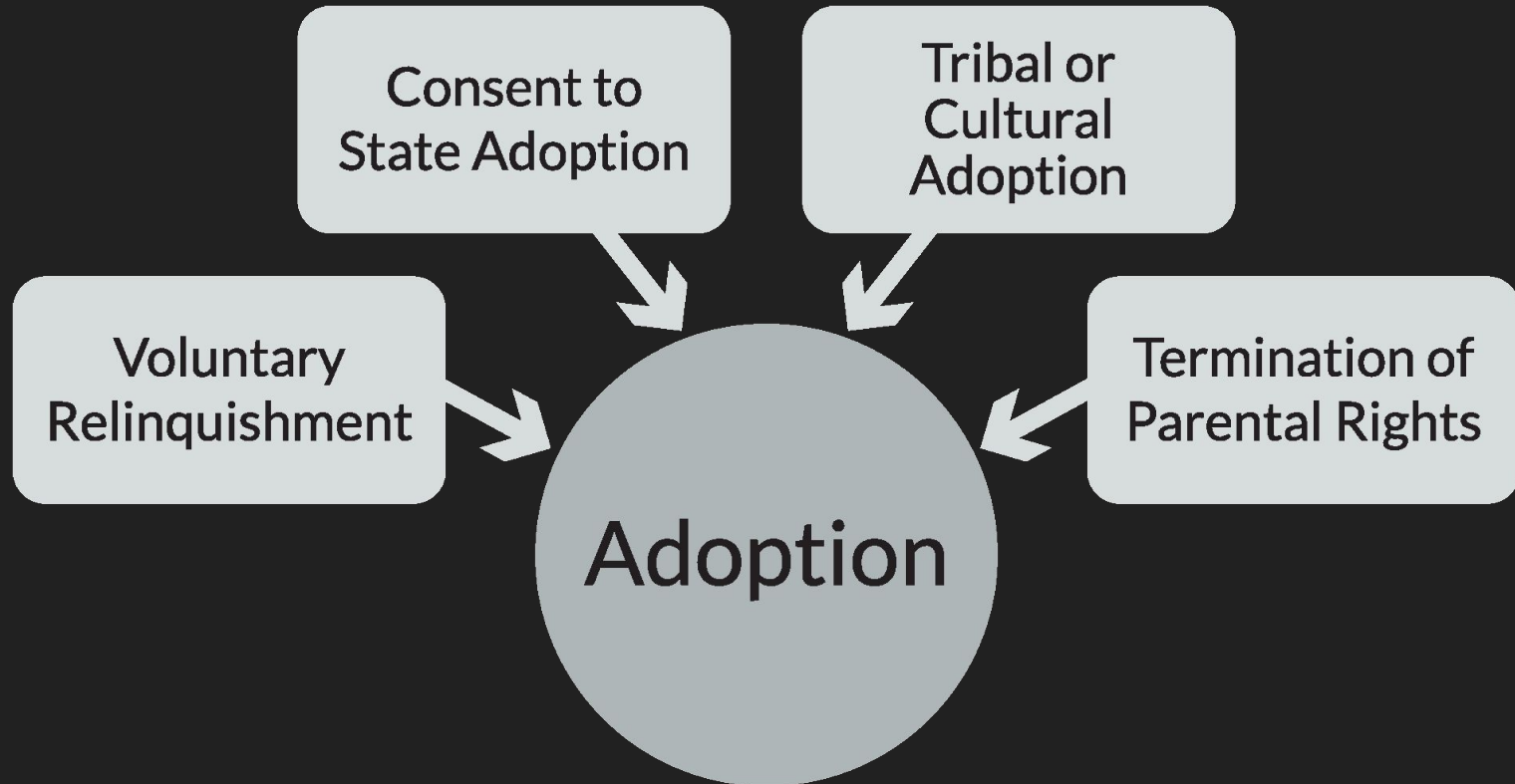
- **What:** Request by person interested in immediate permanent placement and adoption or guardianship;
- **Who:** Extended family member, member of child’s Tribe, or other Indian family member
- **How:** Made at any court hearing or conveyed to OCS by phone, mail, fax, email, in person
- Can also be made on behalf of person by parent, child’s or parent’s Tribe, Tribe in which child eligible
- Person who receives proxy shall file it with court

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Proxy (cont'd)

- Effect of proxy: preserves adoption or guardianship placement preference
- Person does not become party to CINA case
 - Not entitled to court appointed attorney
- Proxy does not initiate adoption or guardianship proceeding
 - Formal petition must be filed
- If child not placed with person when proxy filed:
 - OCS submits permanent plan within 60 days
 - Court holds permanency hearing within 90 days

Permanency: Adoption



Relinquishment of Rights

- Requirements:
 - In writing, on the record, accompanied by a judicial certificate that parent understands or an interpreter was provided
 - In physical presence of judge; or telephonically with judge while in the presence of a “special master”
- Right to withdraw for any reason within 10 days
- If not withdrawn, judge will sign order terminating parent’s rights

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Relinquishment – cont'd

- Cannot be conditioned on adoption by a particular person
- Parent may reserve “privileges” such as visitation
- Judge will incorporate privileges in termination order and recommend they be incorporated in eventual adoption decree
- Prior to or after adoption, parent can request court to enforce or modify privileges
- If no adoption, parent may seek to vacate TPR and reinstate rights

Consent to State Adoption

- Requirements
 - In writing, on the record, accompanied by a judicial certificate that parent understands
 - In physical presence of judge; or telephonically while in the presence of a “special master”
- Right to withdraw any time before decree entered
 - Parents continue to be responsible for child support
- Can be conditioned on adoption by particular person
- Adoption may be “open” to allow contact
 - May not be enforceable
- Parent’s rights terminated when adoption decree signed

Consent to Tribal/Cultural Adoption

- Not addressed in ICWA
- OCS developed procedure for tribal/cultural adoptions in CINA cases
- Adoption can be subsidized
- Post-adoption rights determined by Tribe
- Legal effect: TPR upon issuance of new birth certificate (case law)

Which Option?

- Stipulation to tribal/cultural adoption:
 - Adoptive parents have been identified
 - Tribe is willing to proceed with adoption
 - Can happen in timely fashion
- Consent to state court adoption:
 - Adoptive parents identified, petition imminent
 - Parents understand child support obligations
 - Parents understand post-adoption contact may not be enforceable
- Relinquishment:
 - Adoptive parents not identified
 - Adoption not imminent
 - Parents want enforceable privileges

Mandatory Termination Petition

- Requirements
 - Foster care 15 of 22 months
 - Child under 6 has been abandoned
 - 3 attempts to remedy conduct in 15 months without lasting change
 - No efforts to remedy conduct by permanency hearing
- Exceptions
 - “Compelling reasons” that TPR is not in child’s best interests (including relative care)
 - State hasn’t made active efforts

Termination Proof Requirements

- The State must prove:
 - Clear and convincing evidence:
 - Child is CINA
 - Parent has not remedied conduct
 - Active efforts have been made
 - Evidence beyond a reasonable doubt, supported by expert testimony, of likely serious physical or emotional damage to child
 - By preponderance: TPR in child's best interests
- Judge's decision may be appealed

Petition to Invalidate Proceedings

- Who may petition to invalidate a court order: child, parent, Indian custodian, Tribe
- Grounds - violation of provisions regarding
 - Transfer, Intervention, Full Faith & Credit
 - Notice, Extra Time to Prepare, Appointment of Counsel, Active Efforts, Removal Findings
 - Relinquishment, Consent to Adopt
- Where: CINA case; appeal of CINA case; separate action if not party
- Procedure: CINA Rule 20

Effect of Termination Order

- Parent/child legal relationship ends
 - Parent no longer party to CINA case
 - Legal relationship with relatives not affected
 - Child remains member of Tribe
- OCS assumes all legal custodial rights and responsibilities
 - Permanent barrier condition
- OCS has right to consent to adoption
 - Or can go forward with other permanency option
- Quarterly reports on efforts to identify permanent placement

Reinstatement of Parental Rights

- May be requested by person whose rights are terminated before adoption or guardianship
- Person may request hearing to vacate termination and reinstate parental rights
 - Person is entitled to appointed counsel, if indigent
- Must prove, by clear and convincing evidence:
 - Reinstatement in best interests of child
 - Person rehabilitated
 - Person able to provide necessary care and guidance

Implementing Adoption -- Petition

- Adoption petition filed in court where CINA case is pending (unless agreed otherwise)
- Adoption is separate legal case from CINA case
 - Tribe/GAL must intervene to be party
 - Parent who consented, relinquished, or had rights terminated is not party to adoption case
- Petitioner does not become party to CINA case
 - Not entitled to court appointed attorney
- If petition filed before court approves adoption as permanent plan, petition held in abeyance until after court approves the plan

State Court Adoption Hearings

- Adoption petition heard as part of CINA case
- All requirements of adoption statute must be met
- ICWA placement preferences must be followed, unless there is good cause to deviate
- Adoption must be in child's best interests
- Consents must be obtained from:
 - OCS (unless consent unreasonably withheld)
 - Child 10 and over (unless court waives)
 - Parent whose rights have not been terminated
- Attorney may be appointed for child

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Adoption Hearings – cont'd

- Adoption creates relationship of parent and child between petitioner and child
- Adoption decree legally terminates relationship between child and parents and other relatives
 - Unclear whether siblings are included
- Adoption may be “open” to allow contact between child and parents or other relatives
- Adoptions can be subsidized
- CINA case dismissed when decree signed

Permanency: Guardianship

- Parent's rights do not have to be terminated
- Legal guardian has most of the rights and responsibilities as parent
- Parents may retain residual rights, including visitation
- Parents retain responsibility to provide child support

Implementing Guardianship - Guardianship Petition

- Guardianship petition filed in court where CINA case is pending (unless agreed otherwise)
- Guardianship is separate legal case from CINA case
 - GAL/Tribe must intervene to become parties
 - Parents are parties unless rights terminated
 - Parents have right to attorney
- Petitioner does not become party to CINA case
 - Not entitled to court appointed attorney
- Petition held in abeyance until after court approves guardianship as permanent plan

Guardianship Hearings

- Petition heard as part of CINA case
- Necessary findings:
 - Parents rights suspended or terminated
 - Removal findings: clear and convincing evidence of harm if returned, with expert testimony
- Who should be appointed:
 - ICWA foster care placement preferences apply
 - Person nominated by youth 14 and older
- Guardians have most rights/responsibilities of parent
 - Parents retain right to visit/responsibility of support

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Guardianship Hearings (cont'd)

- May be subsidized
 - Medicaid not available to unlicensed relatives
- CINA case dismissed; custody released to guardian
- Probate court retains jurisdiction
 - Guardian files annual report
- Guardianship ends at age 18
- Can be modified or dissolved earlier

Adoption or Guardianship?

- Some factors to consider:
 - Age of the child
 - Desire of the child
 - Desire of the caregiver
 - Desire of the parents
 - Cultural considerations
 - Availability of financial support
 - Relationship between the child and the parents
 - Relationship between parents and caregivers

Permanency: Permanent Placement with Fit and Willing Relative²⁶

- Not listed in permanency statute as option
 - Referenced in CINA Rules as an option
 - OCS statutory duties include considering this option
- OCS policy:
 - Can only be permanency goal for youth 16 and over
 - Need positive home study for relative
 - CINA case remains open until youth reaches 18
- Other legal bases for this option:
 - Release as a final disposition order
 - Relative can obtain custody order

AS 47.10.080(l); CINA R. 17.2(f)(4); AS
47.14.100(o)(3);
CPS Manual 3.13; AS 47.10.080(c)(2); AS
47.10.113

Permanency: Another Planned Permanent Living Arrangement

- Court can choose this option only if there is “compelling reason”
- OCS must rule out adoption, guardianship, and permanent relative placement before recommending APPLA
- OCS must continue to search for adoptive home or legal guardian until youth 21
- For youth over 16, court must identify services needed for independent living or transition to adult protective services